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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,830	01/22/2004	Kenneth Bruce Flaniken	P2004/001	7692
7590	09/29/2005		EXAMINER	
Mr. Martin A. Weeks 1909 Aladdin Norman, OK 73072			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 09/29/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/763,830	<b>Applicant(s)</b> FLANIKEN, KENNETH BRUCE	
	<b>Examiner</b> Alissa L. Hoey	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This is in response to amendment received on 06/15/05. Claims 1-20 were cancelled and claims 21-36 were newly added. Claims 21-36 are finally rejected below.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the elastic material of the head and face cover of claim 29 is not found in the specification.

### ***Claim Objections***

3. Claim 27 is objected to because of the following informalities: in lines 9-10 there is no antecedent basis for "the storage structure". Appropriate correction is required.
4. Claim 26 is objected to because of the following informalities: should the pocket be attached to the "hood" and not the "garment body portion" as claimed? Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 21-27 and 30 and 32-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Humbrect (US 5,713,077).

In regard to claim 21, Humbrect teaches a garment for a person comprising a garment body portion (11) that substantially covers a torso of the person and a hood (13) attached to the garment body (figures 1 and 7). A rollable head-and face cover (29) attached to the hood such that the hood is external to the head and face cover wherein the head and face cover resiliently engages a head and face of the person when the head and face cover is in a deployed position (figure 6a, 6b: column 2, lines 36-44).

In regard to claim 22, Humbrect teaches the head-and-face cover (29) being deployed and the hood (11) being in the up position (figures 4 and 5). The hood is positioned over a top and back of the head and face cover to form an insulating air layer about the head of the person between the head-and-face cover and the hood (figures 4, 5, 6a, 6b).

In regard to claim 23, Humbrect teaches the head-and-face cover (29) operating independently from the hood such that the head-and-face cover is capable of being deployed or not deployed irrespective of the position of the hood (figures 1-7). The hood may be positioned in the up or down position irrespective of the deployment or non-deployment of the head and face cover (column 1, lines 52-61).

In regard to claim 24, Humbrect teaches a pocket (21) attached to the hood such that the head-and-face cover is rolled and crumpled into a compact mass for insertion into the pocket for compact storage of the head-and-face cover when the head-and-face cover is not in the deployed position (figure 9).

In regard to claim 25, Humbrect teaches a pocket (21) having a fastener (23) to further secure the head-and-face cover in the pocket.

In regard to claim 26, Humbrect teaches the pocket (21) being a piece of material attached to the hood along sides and a bottom of the pocket and where the pocket has an open top to receive the head-and-face cover (column 2, lines 66-67 through column 3, lines 1-3).

In regard to claim 27, Humbrect teaches a garment for a person comprising a body portion (11) to substantially cover a torso of the person and a unitary head-and-face cover (29) to substantially cover and resiliently engaged a head and face of the person to shield the head and face from wind. The head-and-face cover (29) being in a deployed position when the head-and-face cover is covering the head and face of the person. A hood (13) attached to the garment body portion and a pocket (21) attached to the hood inside the hood such that the head-and-face cover is rolled and crumpled into a compact mass for insertion into the pocket for storage when the head-and-face cover is not deployed (figure 9).

In regard to claim 30, Humbrect teaches the pocket (21) being a piece of material attached to the hood along sides and a bottom of the pocket and wherein the pocket has an open top to receive the head-and-face cover (column 2, lines 66-67 through column 3, lines 1-3).

In regard to claim 32, Humbrect teaches a garment comprising a body portion (11) that substantially covers a torso of the person and a hood attached to the garment body portion (figures 1 and 7). The hood (13) covers a back and top of the head of the user when the hood is in the up position and wherein the hood dangles behind an upper back of the person when the hood is in the down position (figures 1 and 7). A ski mask

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(29) attached to the hood inside the hood such that the hood is external to the ski mask (figures 4, 5, 6a, 6b, 9).

In regard to claim 33, Humbrect teaches the ski mask (29) resiliently engaging the head and face of a person when the ski mask is in a deployed position due to the material construction (column 2, lines 39-44).

In regard to claim 34, Humbrect teaches the ski mask (29) being capable of being rolled in a direction substantially parallel to the spine of the person.

In regard to claim 35, Humbrect teaches a pocket (21) wherein the pocket is a piece of material attached to the hood (13) along a periphery of the pocket and wherein the pocket has an open top to receive the ski mask (column 2, lines 66-67 through column 3, lines 1-3).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Humbrect.

Humbrect teaches a hooded garment as described above in claim 27. However, Humbrect fails to teach the head-and-face cover being constructed from an elastic material.

With respect to the head-and-face shield being elastic it would have been obvious to one having ordinary skill in the art to have provided the face shield with an elastic material or not because as long as the face shield resiliently engages the wearer's head and face it can be made out of different resilient materials as desired and as supported in Applicant's specification on page 11, paragraph 0048.

9. Claims 28, 31 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humbrect in view of Duyn (US 6,370,692).

Humbrect teaches a hooded garment as described above in claims 27, 32 and 35. However, Humbrect fails to teach the garment being water imperable, and a drawstring to secure the hodd by tying the drawstring around the chin of the user.

In regard to claims 28 and 36, Duyn teaches a hooded garment made of a water impermeable material (column 2, lines 62-67).

In regard to claim 31, Duyn teaches a drawstring (70) to secure the hood and is capable of being tied around the chin of a person.

It would have been obvious to have provided the hooded garment of Humbrect with the water impermeable material and drawstring of Duyn, since the hooded garment of Humbrect provided with a water impermeable layer would protect the user from precipitation and the drawstring would provide for secure positioning of the hood so that it does not move around impeding the wearer line of vision.

***Response to Arguments***

10. Applicant's arguments with respect to claims 21-36 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

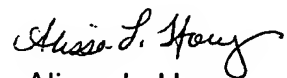
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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